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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

GL Master Inc.,

Debtor.

Case No.: 2:18-bk-24302-NB

Chapter: 7

**MEMORANDUM DECISION IMPOSING
SANCTIONS OF \$2,000.00 AGAINST
THOMAS J. POLIS, ESQ.**

Preliminary Hearing:

Date: September 14, 2021

Time: 2:00 p.m.

Evidentiary Hearing:

Date: October 26, 2021

Time: 9:00 a.m.

Place: Via ZoomGov

Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

This Court does not take lightly its power to issue sanctions. But the integrity of the bankruptcy system requires that sanctions be imposed when there is clear and convincing evidence that an officer of this Court, Thomas J. Polis, Esq., has violated discovery orders repeatedly, willfully, and in bad faith.

Alternatively, if there were any doubt about such willfulness and bad faith (which, in this Court's view, there is not), this Court finds that at the very least Mr. Polis acted

wantonly, with reckless disregard for this Court's discovery orders, and reckless disregard for the truth or falsity of his factual assertions and denials, for the improper purposes of (i) hampering enforcement of discovery orders, (ii) disrupting the discovery efforts of certain creditors (the "Alleged Employees"), (iii) needlessly increasing their litigation costs, (iv) causing them delay, and (v) vexing and oppressing them, all with the goal of persuading them to abandon their claims. Sanctions must be imposed for these alternative reasons.

1. Summary

At the above-captioned times this Court held hearings on its order directing Mr. Polis to appear and show cause why this Court should not impose sanctions against him for "failure to comply with this Court's discovery orders." See Order ("Polis OSC") (dkt. 337) & Ex. A, at pp. 5:1-7:8. Appearances were as noted on the record.

Having heard testimony, assessed credibility, and reviewed documents and records, this Court is persuaded that there is more than sufficient evidence to support punitive sanctions in the dollar amount put at issue by the OSC. In fact, the evidence supports the imposition of a greater dollar amount, but the OSC is limited to \$2,000.00.

Mr. Polis will be directed by separate order to pay that amount. In view of Mr. Polis' stated vacation plans, this Court has deferred issuance of this Memorandum Decision until now, and will defer entry of the separate order implementing this Memorandum Decision until after January 6, 2022, so that Mr. Polis has additional time to file any notice of appeal or other papers.¹

¹ The OSC expressly notes that these sanctions might not be the only consequence of Mr. Polis' acts and omissions. As stated in the Polis OSC itself:

This Court notes that any punitive sanctions and any sanctions under Rule 9011 are independent of, and in addition to, this Court's power to impose compensatory, coercive, or other sanctions. Nothing in this order should be construed to limit any future sanctions, regardless whether such sanctions are at the request of a party in interest or on this Court's own motion, and regardless whether such sanctions are punitive, coercive, compensatory, statutory, rule-based, or some other form of sanctions. [OSC (dkt. 337), p. 3:1-7 (emphasis added).]

Now that this Court has thoroughly reviewed the evidence, this Court is persuaded that Mr. Polis should be referred to a disciplinary panel of this Court to consider whether it is appropriate to suspend Mr. Polis from practicing before this Court for a period of time. That referral will be a separate proceeding and is not part of this order. It is noted here only in the interest of full disclosure.

2. Findings of Fact

a. Case history

On December 7, 2018 Debtor filed its voluntary petition commencing this chapter 7 case. Ever since, certain creditors (the “Alleged Employees”) have been attempting to obtain discovery from Debtor, its agents, and affiliates.

At first it appeared that the discovery process might be routine. On May 13, 2019, pursuant to a stipulation between Debtor and the Alleged Employees, this Court ordered Debtor to produce all documents in its possession, custody, or control that are responsive to a request by the Alleged Employees. Shortly thereafter, this Court ordered Debtor’s counsel (“ChaoLaw”) to produce various documents. Any basis to withhold documents was limited by the chapter 7 trustee’s waiver of any prepetition attorney-client privilege, and any documents still being withheld were ordered to be listed on a privilege log. See Stip. With Debtor (dkt. 11) (especially at Ex. B, p. 1, item 22); Order re Debtor (dkt. 12); Waiver by Trustee (dkt. 21, 23); Order re ChaoLaw (dkt. 25, as amended by dkt. 40).

On July 1, 2019 Mr. Polis of Polis & Associates, APLC (“PolisLaw”) substituted in as Debtor’s bankruptcy counsel (ChaoLaw has continued to serve in its capacity as Debtor’s nonbankruptcy counsel). Dkt. 17. On February 19, 2020, after many frustrated attempts to obtain discovery and privilege logs, the Alleged Employees filed a motion seeking sanctions against Mr. Polis, ChaoLaw, and others. See Motion for OSC (dkt. 95).

On January 27, 2021, after extensive briefing and a multi-day evidentiary hearing, this Court issued a Memorandum Decision (the “Sanctions Memdispo,” dkt. 276) finding ChaoLaw and others (the “Contemnors”) in contempt, but not Mr. Polis. This Court stated:

In addition, for the avoidance of any doubt, this Court notes again that there may be other consequences (e.g., possible waiver or forfeiture of any right to withhold documents based on the work product doctrine, and potentially consequences with the California State Bar). But, to the extent any such matters arise in this Court, they will be addressed when and if they are presented.

1 The Alleged Employees have demonstrated that Mr. Polis made several
2 frivolous objections during Freda Wang's depositions, based on previously
3 waived claims of privilege (e.g., Tr. 7/7/20 (dkt. 184), p.6:4-13) and without
4 articulating a proper basis to object under Rule 30 (e.g., Tr. 7/7/20 (dkt. 184),
5 p.7:4-19). The Alleged Employees have also established that Freda Wang
6 [Debtor's designated "person most knowledgeable"] was woefully unprepared
7 for her examinations But while Mr. Polis' conduct was misinformed and
8 overly zealous, this Bankruptcy Court is not persuaded that it was objectively
9 unreasonable under *Taggart*. [See *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1799
10 (2019) ("[C]ivil contempt may be appropriate if there is no objectively
11 reasonable basis for concluding that the [contemnor's] conduct might be
12 lawful").]

13 Mr. Polis is cautioned that he has now been made aware of the applicable
14 discovery standards (as understood by this Court). If he continues to conduct
15 himself in a similar manner in future, this Court might be persuaded to find that
16 the same conduct could rise to the level of contempt warranting sanctions.
17 [Sanctions Memdispo. (dkt. 276), p. 26:9-21.]

18 Since that time, there has been a slow trickle of document production, but with
19 huge gaps and incomplete privilege logs. In any real sense the Contemnors have
20 continued to stonewall, and this Court has been persuaded to impose fines of \$100.00
21 per day per Contemnor, later increased to \$500.00 per day.

22 Those fines have been ineffective. One or more persons (collectively, the
23 "Funder") have been paying them, perhaps because the sanctions pale in comparison
24 with the Alleged Employees' multi-million dollar claim. The Funder also appears to have
25 been paying the attorney fees of Mr. Polis and ChaoLaw.

26 In response, the Alleged Employees have sought alternative remedies. This
27 Court has been persuaded to rule that the Contemnors, because of their
28 gamesmanship, have waived and forfeited any attorney-client privilege or other basis
they might assert to withhold documents. Order (dkt. 366), p. 4:10-16. This Court has
also directed the individual Contemnors to show cause why they should not be
incarcerated until they comply with this Court's discovery orders. See Order (dkt. 471).

29 All of these proceedings are ongoing. They have consumed many months, much
30 time and expense for the Alleged Employees, and substantial judicial resources. See,
31 e.g., dkt. 276, 291, 327, 330, 336, 337, 361, 365, 366, 464.

32 Throughout these matters, this Court has been careful not to tar Mr. Polis with his
33 clients' misconduct. But over time Mr. Polis has increasingly shown a pattern of

1 allegedly forgetting or overlooking his obligations under this Court's orders, recently
2 involving documents that he received from one of ChaoLaw's attorneys, Johnny Ling,
3 Esq. That prompted this Court, on its own motion, to issue the Polis OSC.

4 **b. Mr. Polis lacks any credibility when he asserts that he forgot or**
5 **overlooked his discovery obligations, *despite more than a dozen***
6 ***reminders*, in connection with the Johnny Ling documents**

7 **i. Mr. Polis prepared a May 17, 2021 declaration stating that he**
8 **will be producing documents**

9 On May 17, 2021 Mr. Polis filed a declaration that he had prepared for Johnny
10 Ling, swearing that responsive documents "are being sent directly to the Alleged
11 Employees' counsel through Contemnors' counsel's office" – *i.e.*, through Mr. Polis.
12 Ling Decl. (dkt. 306), p. 9:24-25 (emphasis added). As set forth below, Mr. Polis later
13 adamantly denied having received any such documents; but later still he admitted that
14 he had received them. See Polis Decl. (dkt. 333). For present purposes, the point is
15 that Mr. Polis' first reminder about the existence of these documents, and his obligation
16 to turn them over, occurred when he prepared Mr. Ling's May 17, 2021 declaration.

17 **ii. Mr. Polis received three emails from Mr. Ling with the**
18 **referenced documents**

19 The second reminder to Mr. Polis about the existence of Mr. Ling's May 17, 2021
20 documents, and his discovery obligations, occurred when he received those documents
21 in three separate emails from Mr. Ling. There is no assertion that the documents were
22 lost in a "spam folder" or anything of the sort. To the contrary, Mr. Polis clearly knew he
23 had received these documents because he forwarded them to his paralegal/assistant.
24 See Polis Decl. (dkt. 333), pp. 2:27-3:3.

25 **iii. The Alleged Employees notified Mr. Polis that they had not**
26 **received the documents**

27 On May 20, 2021, three days after the documents were supposed to be in transit,
28 the Alleged Employees served Mr. Polis with papers stating, "As of this date, this office
has not received any such documents." Response (dkt. 309), p. 6:25-28. This should
have further reminded Mr. Polis that he had received the documents or, if he did not

1 remember receiving them, this third reminder should have at a minimum caused him to
2 investigate and then comply with his discovery obligations.

3 **iv. This Court's July 20, 2021 tentative ruling reminded Mr. Polis**
4 **about the missing documents, as well as his obligation to**
5 **provide a privilege log supported by an appropriate brief and**
6 **declarations**

7 At a hearing on July 20, 2021 this Court orally directed Mr. Polis (at 2:05-2:06
8 p.m.) to review the written tentative ruling for that hearing (dkt. 327) while this Court
9 addressed other matters. That written tentative ruling directed Mr. Polis to address the
10 missing documents from Mr. Ling, and also reminded Mr. Polis of his obligations to
11 provide a privilege log and support for any alleged privilege:

12 In view of Johnny Ling's assertions that he produced responsive documents to
13 Mr. Polis (see Johnny Ling Decl. (dkt. 306), pp. 8:19-9:25), Mr. Polis is
14 directed to address at today's hearing: (i) whether he received responsive
15 documents from Johnny Ling or anyone else, (ii) whether he has produced all
16 or part of such documents to the Alleged Employees' counsel, and (iii) in the
17 event that any such documents have been withheld, whether there is any
18 reason why this Court should not set a deadline of July 27, 2021 for him to file
19 and serve a brief and declaration(s), with a privilege log attached, addressing
20 any alleged grounds for withholding any documents. [Tentative Ruling
21 (dkt. 327), pp. 10:26-11:9 (emphasis added).]

22 Half an hour later (at 2:35 p.m.) the hearing on this matter resumed and Mr. Polis
23 represented, as an officer of the Court and after quoting from the above language on
24 pages 10-11 of the tentative ruling (at 2:42-2:44 p.m.), that "everything" has been
25 produced and "nothing has been held back by me" and "there is no privilege log
26 because I haven't withheld anything." When the Alleged Employees reiterated (at 2:46-
27 2:47 p.m.) that they had not received any documents from Mr. Ling, Mr. Polis stated (at
28 2:48-2:49 p.m.), "I don't want to say [Mr. Ling] is a liar" but "I've not received anything
from Mr. Ling." (Emphasis added.) Despite these emphatic assertions, Mr. Polis
offered no explanation as to how he could have prepared and filed Mr. Ling's
declaration, and then been reminded by the Alleged Employees about the missing
documents, but somehow still failed to investigate or remember the missing documents.
Dkt. 309, p. 6:25-28.

v. This Court's July 22, 2021 Order once again directed Mr. Polis to address the missing documents from Mr. Ling, or anyone else, and to provide a privilege log supported by an appropriate brief and declarations

Because of the apparent inconsistencies noted above, this Court was not persuaded by Mr. Polis' oral denials that the documents existed. On July 22, 2021 this Court issued a supplemental order providing:

3) Mr. Polis is directed to file a declaration no later than July 27, 2021, addressing:

a) Whether he received responsive documents from Mr. Johnny Ling or anyone else; and,

b) Whether he has produced all or part of such documents to the Alleged Employee's counsel.

In the event documents have been withheld, by no later than July 27, 2021, Mr. Polis is to file and serve a brief and declaration(s), with a privilege log attached, addressing any alleged grounds for withholding any documents. [Order (dkt. 330), p. 2:13-20 (emphasis added).]

In response, Mr. Polis filed his declaration (dkt. 333), in which he admitted that, despite his previous adamant assertions to the contrary, he had in fact received documents from Mr. Ling. He alleged that he had forgotten those documents and, through a mix-up in his office, had inadvertently failed to produce them. He did not address whether any documents had been withheld by Mr. Ling or, if so, the requirements of a privilege log with a supporting brief and declaration(s).

vi. This Court's August 3, 2021 tentative ruling pointed out gaps in Mr. Polis' declaration, and reminded him about the missing privilege log, brief, and supporting declarations

Mr. Polis' declaration (dkt. 333) disregarded several portions of this Court's supplemental order, and his excuses appeared to raise more questions than they answered, as pointed out by the Alleged Employees (dkt. 334). This Court summarized the situation in its tentative ruling posted before a hearing on August 3, 2021:

(d) Failure of Mr. Polis to comply with this Court's discovery orders

Despite Mr. Polis' representations at the hearing on July 20, 2021 that his office has a practice of immediately turning over responsive documents to Counsel for the Alleged Employees, Mr. Polis's supplemental declaration (dkt. 333, p.3:7-17) admits that he failed to do so. That is startling.

1 The history is that on 5/17/21 Mr. Polis filed the declaration of Johnny
2 Ling, with Mr. Polis' name listed in the caption, in which Johnny Ling
3 declared: "I have personally reviewed the Law Offices of Lynn Chao
4 A.P.C.'s documents, books and records relevant to the extent necessary
5 to prepare this declaration" (dkt. 306, p. 8:17-18), and "[unspecified]
6 documents are being sent directly to the Alleged Employees' counsel
7 through Contemnors' counsel's office [*i.e.*, through Mr. Polis]." *Id.* (dkt.
8 306), p. 9:24-25 []. Mr. Polis now declares (dkt. 333, pp. 2:27-3:3) that on
9 the same day, 5/17/21, he did in fact receive three emails from Johnny
10 Ling and forwarded them to his legal assistant to be turned over to the
11 Alleged Employees' counsel.

12 But within days thereafter the Alleged Employees notified Mr. Polis that
13 they had not received any such documents. They did so on 5/20/21,
14 stating: "As of this date, this office has not received any such documents."
15 Dkt. 309, p. 6:27-28. ... Mr. Polis does not declare that the Alleged
16 Employees' reference(s) to missing documents prompted him to ask his
17 legal assistant why the documents had not been forwarded. Instead, Mr.
18 Polis declares (dkt. 333, p. 3:4-6) that by the time of the hearing on
19 7/20/21 he had forgotten that any such documents ever existed, and
20 therefore he wrongly (but adamantly) asserted that he had never received
21 such documents.

22 Meanwhile, Johnny Ling apparently had the same alleged lapse of
23 memory. On 7/14/21 Mr. Polis filed another declaration of Johnny Ling
24 [the "7/14/21 Ling Declaration."] [Again] Mr. Polis' name [was] listed in the
25 caption[.] ... Johnny Ling declared: "All communications with GL Master,
26 Inc. (formerly Little Sheep International, Inc.) that would not violate
27 confidentiality and attorney-client privilege with other parties have been
28 produced in previous productions in October 2019 and December 2019" -
he makes no mention of the documents that he provided to Mr. Polis on
5/17/21. Ling Decl. (dkt. 325), p.9:20-22 (emphasis added).

At the very least, the above history appears to exhibit an extremely
cavalier attitude toward discovery. In addition, this Court notes that the
explanations offered by Mr. Polis are not supported by any declaration
from his legal assistant nor any supplemental declaration from Mr. Ling
verifying the specific documents and number of pages that he provided to
Mr. Polis.

Moreover, as the Alleged Employees point out (dkt. 334, pp. 3:12-4:3
and 5:3-5), there is still no privilege log covering the several litigation
matters that Johnny Ling admits handling for Debtor, despite his
references to "confidentiality and attorney-client privilege." Dkt. 325,
p.9:20-22. Mr. Polis does not address the missing privilege logs.

Nor is there any definitive declaration from Mr. Polis about what
responsive documents he has or has not received from Johnny Ling at
any time, or from anyone else at any time, as this Court ordered him to
file. Specifically, the Supplemental Coercive Sanctions Order directed Mr.
Polis "to file a declaration no later than July 27, 2021," addressing:

1 a) Whether he received responsive documents from Mr. Johnny
2 Ling or anyone else; and,

3 b) Whether he has produced all or part of such documents to the
4 Alleged Employee's counsel.

5 In the event documents have been withheld, by no later than
6 July 27, 2021, Mr. Polis is to file and serve a brief and
7 declaration(s), with a privilege log attached, addressing any alleged
8 grounds for withholding any documents. [Supplemental Coercive
9 Sanctions Order (dkt. 330), p. 2:13-20.]

10 Again, the Alleged Employees point this out. See dkt. 334, pp. 3:12-
11 4:3 and 5:3-5. [Dkt. 337, Ex. A, pp.5:16-6:27 (emphasis altered)]

12 **vii. Mr. Polis' supplemental explanations raised still more**
13 **questions, including his claim to have forgotten or overlooked**
14 **his obligation to provide a privilege log**

15 On August 12, 2021 Mr. Polis filed another declaration (dkt. 339) purporting to
16 address the issues that he had, through alleged "inadvertence," failed to include in his
17 earlier declaration (dkt. 333). Polis Decl. (dkt. 339), p. 4:1-5. But, again, his declaration
18 is incomplete and evasive.

19 First, he alleges that immediately after receiving the documents from Mr. Ling he
20 forwarded those documents to his paralegal for production, and he had "no need to
21 double check" that she actually did produce the documents because she has always
22 been "completely dependable." Polis Decl. (dkt. 339), p. 5:15-16 (emphasis added).
23 But, of course, he had every reason to "double check" because three days later the
24 Alleged Employees had served him with a brief asserting that they had "not received
25 any such documents" (dkt. 309, p. 6:27-28) and, as the above-quoted tentative ruling
26 already pointed out, "Mr. Polis does not declare that the Alleged Employees'
27 reference(s) to missing documents prompted him to ask his legal assistant why the
28 documents had not been forwarded."

Nothing in his supplemental declaration addresses this. But, in what was now a
standard refrain, he belatedly testified (at the above-captioned evidentiary hearing) that
he had inadvertently overlooked the Alleged Employees' reminder that they had not
received the missing documents.

1 Second, Mr. Polis' explanation for forgetting Mr. Ling's May 17, 2021 email was
2 that the next most recent email from Mr. Ling had been "nine months prior." Polis Decl.
3 (dkt. 339), p. 5:17-21. But, if anything, that gap in emails cuts the other way: if Mr. Ling
4 had not sent emails in a long time then an email from him with responsive documents
5 would stand out, especially after many months of the Contemnors and Mr. Polis
6 adamantly asserting that there were no more documents. See, e.g., dkt. 276, pp.
7 11:12-17:28; dkt. 327, pp. 5:27-6:3; dkt. 360, p. 3:20-22; dkt. 389, pp. 3:23-4:1; dkt. 390,
8 p. 4:8-14.

9 Third, despite quoting this Court's order directing him to address whether he has
10 received responsive documents from Mr. Ling "or anyone else" (Polis Decl., dkt. 339, p.
11 6:17-18), the supplemental declaration from Mr. Polis only declares that he has not
12 received responsive documents from certain specified individuals. Polis Decl. (dkt.
13 339), p. 6:21-24.

14 Fourth, Mr. Polis disregarded that, as pointed out in the above-quoted tentative
15 ruling for August 3, 2021, there was no "supplemental declaration from Mr. Ling
16 verifying the specific documents and number of pages that he provided to Mr. Polis."
17 There was still no such declaration.

18 Fifth, Mr. Polis argues that it was "inadvertent" that both he and Mr. Ling had
19 neglected to file a privilege log, notwithstanding that both of them are attorneys, to
20 whom the obligation to produce privilege logs is well known. Polis Decl. (dkt. 339),
21 p. 6:8-13. Yet this is not the first incredibly coincidental incident of "inadvertent"
22 omission by both Mr. Polis and Mr. Ling at the same time. As noted in the above-
23 quoted tentative ruling for August 3, 2021, the earlier incredible coincidence was both of
24 them listing the Contemnors' document productions, in the 7/14/21 Ling Declaration, but
25 both coincidentally forgetting to include the documents that Mr. Ling sent to Mr. Polis on
26 May 17, 2021, while remembering to include two earlier productions.

27 In any event, Mr. Polis had numerous reminders of his obligation to provide a
28 privilege log, because that obligation was noted in:

- 1 (A) Debtor's stipulation to provide documents and a privilege log (dkt. 11,
2 p. 2:23-26);
- 3 (B) this Court's order directing Debtor to produce documents and a privilege log,
4 which applies to Johnny Ling as Debtor's counsel who has possession
5 custody, or control of Debtor's documents (dkt. 12, p. 3:7-12);
- 6 (C) this Court's order directing ChaoLaw to produce documents and a privilege
7 log (dkt. 25, pp. 2:26-3:2);
- 8 (D) this Court's amended order directing ChaoLaw to produce documents and a
9 privilege log (dkt. 40, p. 3:8-12) (no relevant changes to prior order, but
10 another reminder to provide a privilege log);
- 11 (E) this Court's July 20, 2021 tentative ruling (dkt. 327), noting the need for a
12 privilege log, pp. 10:26-11:9;
- 13 (F) this Court's order on July 22, 2021 expressly directing Mr. Polis to provide a
14 privilege log (dkt. 330, p. 2:13-20); and
- 15 (G) this Court's August 3, 2021 tentative ruling (quoted above) once again
16 reminding Mr. Polis to provide a privilege log.

17 That is a total of no less than seven reminders of the obligation to provide a
18 privilege log. Those reminders started with the discovery orders that Mr. Polis has been
19 fighting against ever since he appeared in this case (on July 1, 2019) and extended
20 through the last few months when this Court addressed the missing privilege logs three
21 separate times (items "(E)" through "(G)" above). Yet, in the face of all of this, Mr. Polis
22 asserts that his repeated, ongoing failure to provide a privilege log (until much later) was
23 attributable to "inadvertence."

24 Fifth, items "(E)" through "(G)" above also directed Mr. Polis to file a brief and
25 declarations addressing any purported basis to withhold documents. Mr. Polis has
26 never filed such a brief or declarations (except, after being separately ordered to do so,
27 as to his own asserted work product – not as to any documents he received from
28 Johnny Ling or anyone else). In fact, Mr. Polis fails even to mention the missing brief or

1 declarations in his supplemental declaration or any later documents, so apparently he
2 has once again “overlooked” this Court’s order to do those things (dkt. 330, p. 2:13-20).

3 A supporting brief and declarations are particularly important because the
4 purported privilege logs that eventually were sent to the Alleged Employees’ counsel on
5 or about August 22, 2021 appear to be a complete sham. They are unverified,
6 overlapping, and obviously incomplete. As the Alleged Employees point out, the
7 privilege logs fail to mention documents that are known to exist (see dkt. 353, p. 3:3-6 &
8 Ex. A & B at PDF pp. 14-20); they fail to include a single WeChat communication (*id.*,
9 p. 3:8-13); they include assertions of privilege that appear on their face to be improper
10 (*id.*, p. 3:14-28); they omit meaningful descriptions of the documents being withheld (*id.*,
11 p. 4:1-6); they omit any information about whether emails were “cc’d” to any third party
12 not subject to the purported attorney-client privilege (*id.*, p. 4:7-9); and they fail to
13 indicate what attachments were or were not included with emails (*id.*, p. 4:9-10).

14 All of these deficiencies have been and will be the subject of separate
15 proceedings. For present purposes the point is only that Mr. Polis was expressly
16 ordered to provide a supporting brief and declaration(s) but has disregarded that order.
17 This undermines any attempt to assess the purported grounds to withhold those
18 documents whose existence has been revealed, and further undermines any confidence
19 that the Alleged Employees or this Court could have that the privilege logs have been
20 prepared with care and are complete.

21 **viii. In sum, Mr. Polis has willfully and in bad faith disregarded this**
22 **Court’s discovery orders in connection with the Johnny Ling**
23 **documents**

24 To recap, Mr. Polis initially vehemently denied having received any documents
25 from Mr. Ling, despite having drafted Mr. Ling’s declaration stating that the documents
26 were being produced, despite having actually received those documents, despite having
27 arranged (unsuccessfully) for his office to produce those documents, despite having
28 been reminded by the Alleged Employees of the missing documents, and despite
having prepared a subsequent declaration of Mr. Ling purporting to list the Contemnors’

1 document productions but omitting this May 17, 2021 production. When Mr. Polis later
2 belatedly admitted that he had received the missing documents from Mr. Ling, both of
3 those attorneys “inadvertently” failed to provide any privilege log, despite the applicable
4 rules requiring privilege logs, and despite one stipulation, two tentative rulings, and four
5 orders all requiring privilege logs. After being reminded of not only the missing privilege
6 logs but also the missing brief and supporting declarations, Mr. Polis filed a
7 supplemental declaration admitting to the missing privilege log but failing to address the
8 missing brief or declarations. Weeks later, a purported privilege log was sent, but no
9 supporting brief or declarations have ever been provided.

10 Having heard and observed Mr. Polis’ testimony at the above-captioned
11 evidentiary hearing, this Court finds his story completely incredible. His pattern of
12 “overlooking” this Court’s orders strains credulity well past the breaking point. This
13 Court finds that Mr. Polis has willfully and in bad faith elected to disregard his
14 obligations under this Court’s discovery orders.

15 **ix. Alternatively, Mr. Polis acted wantonly and with reckless**
16 **disregard of this Court’s discovery orders and for the truth,**
17 **and with improper purposes including to delay discovery and**
needlessly increase the costs of litigation

18 If there were any doubt about Mr. Polis’ willfulness and bad faith (which, in this
19 Court’s view, there is not), this Court finds that at the very least Mr. Polis acted
20 wantonly, with reckless disregard for this Court’s discovery orders. Mr. Polis also acted
21 with reckless disregard for the truth or falsity of his factual assertions and denials. Had
22 he made any reasonable investigation before making those assertions and denials, he
23 would have realized they were false.

24 As for his motives, this Court finds that they are clear from the evidentiary
25 hearing, as well as from the course of this bankruptcy case. Mr. Polis has been seeking
26 for well over two years to delay any discovery, disrupt the Alleged Employees’ efforts to
27 obtain discovery, hamper the enforcement of this Court’s discovery orders, needlessly
28

1 increase the costs of litigation for the Alleged Employees, cause them delay, and vex
2 and oppress them, all with the obvious goal of persuading them to abandon their claims.

3 Having heard Mr. Polis' testimony, and observed his demeanor, this Court finds
4 no credibility in his denials of any improper motives. He also lacks any credibility when
5 he attributes all of his failures to comply with discovery orders to innocent
6 "inadvertence."

7 In plain English, there is far too clear a pattern based on over a dozen instances
8 of "inadvertence," despite repeated reminders. There is a saying: "fool me once, shame
9 on you; fool me twice, shame on me." This Court is not aware of any expression that
10 would match Mr. Polis' attempts to fool the Alleged Employees and this Court over a
11 dozen times.

12 Based on all of the foregoing, this Court finds that Mr. Polis acted wantonly and
13 with reckless disregard of this Court's discovery orders and for the truth, and with the
14 improper purposes listed above, including to delay discovery and needlessly increase
15 the costs of litigation. These findings are based on clear and convincing evidence.

16 **x. Conclusion as to Mr. Polis' conduct in connection with the**
17 **May 17, 2021 documents from Johnny Ling**

18 Mr. Polis' blatant misconduct amply justifies the \$2,000.00 punitive sanction
19 contemplated by the OSC. If there were any doubt about the foregoing factual findings
20 (which, in this Court's view, there is not), this Court takes judicial notice of other
21 proceedings in this case (discussed below) as corroborative evidence. Mr. Polis'
22 penchant for allegedly forgetting or inadvertently overlooking orders is increasingly less
23 credible the more he repeats that pattern.

24 **c. Immediately after the Johnny Ling matter, Mr. Polis falsely declared that**
25 **all documents received from Ms. Wang had been turned over**

26 On August 12, 2021, Mr. Polis filed a declaration stating that "any and all
27 documents I have received from ... Freda Wang in any way related to the responsive
28 documents ... have been turned over to the Purported Employee's counsel ... I can

1 assure the Court and all interested parties that nothing has been held back.” Dkt. 339,
2 p.6:21-26 (emphasis added). This was just 15 days after signing his July 27, 2021
3 declaration (dkt. 333) admitting that, despite his adamant denials of having received any
4 documents from Johnny Ling, he had “inadvertently” failed to produce the May 17, 2021
5 documents. Therefore, one would have expected Mr. Polis to be particularly careful
6 about once again claiming to have produced all documents if he had not done so.

7 But, as the Alleged Employees point out (dkt. 353, pp.2:9-10, 7:16-8:19), on
8 August 27, 2021 Ms. Wang stated in a declaration that she had turned over additional
9 documents to Mr. Polis on August 10, 2021. Dkt. 350, p.6:1-2, 17-18 & 20-21. Mr. Polis
10 claims that he and his paralegal/assistant had personal matters that delayed the
11 production of these documents, but he fails to address why he denied their existence in
12 his August 12, 2021 declaration. See dkt. 353, pp. 7:16-8:18, dkt. 354, p. 4:6-15.

13 **d. In the same declaration Mr. Polis fails to disclose more documents that**
14 **he received from Johnny Ling but had not turned over**

15 The same declaration from Mr. Polis, on August 12, 2021, states that “any and all
16 documents I have received from Johnny Ling, Esq. ... have been turned over” and
17 “nothing has been held back.” Dkt. 339, p. 6:21-26. But Mr. Ling later declared (i) that
18 he forwarded a privilege log and non-privileged documents to Mr. Polis the day before
19 (on August 11, 2021) and (ii) that he is informed that Mr. Polis did not send those
20 documents to the Alleged Employees’ counsel until August 24, 2021 and August 25,
21 2021. Dkt. 360, p. 3:20-26. Again, Mr. Polis has never attempted to explain his false
22 statement that all documents have been turned over.

23 In addition, this Court notes that even when Mr. Polis belatedly produced the
24 documents and a purported privilege log, he failed to provide any brief or declarations
25 supporting the asserted privileges. Again, this is part of his pattern of disregarding this
26 Court’s orders.

**e. Mr. Polis disregarded this Court's order to meet and confer with
opposing counsel**

At Mr. Polis' request (dkt. 343, 344), the hearing on the Polis OSC was
continued. The order granting that continuance provided:

No later than August 24, 2021, Mr. Polis is directed to meet and confer with
counsel for the Alleged Employees regarding any retention of [forensic
computer] specialists ...and to devise "search parameters"
[Dkt. 345, p. 3:13-17] (emphasis altered).

Mr. Polis later declared that he "did not see the provision to meet and confer."
Dkt. 354, p.4:24-27 (emphasis added). He belatedly complied only when he "re-read"
the order, well after the deadline. *Id.*

**f. Mr. Polis disregarded this Court's August 17, 2021 order to file a proof
of service of the order directing his clients to appear at a hearing on
September 14, 2021**

The initial hearing on the Polis OSC also involved ongoing sanctions against the
Contemnors, including possible incarceration. This Court sought to assure not only that
the Contemnors received notice that they were being ordered to appear in person at
that hearing, but that the record included evidence of such notice. Accordingly, this
Court's order provided:

2. Contemnors Lynn Chao and Freda Wang are directed to appear [on
September 14, 2021]

a. Mr. Polis is directed to serve a copy of this Order on Lynn Chao and
Freda Wang and file a proof of service by no later than August 24,
2021. [Dkt. 345, p. 2:23-28] (emphasis altered).

Mr. Polis neglected to file any such proof of service (although Ms. Chao and Ms.
Wang did appear). This Court then issued a further order directing him to file a
declaration establishing that he served that order on Lynn Chao and Freda Wang.
Order (dkt. 366), p. 3:4-10. But even his belated declaration regarding service of this
Court's orders does not state that he served that order on either Contemnor. Dkt. 385.

1 There is further evidence that he did not timely serve that order. At the hearing
2 on September 14, 2021, Ms. Wang stated that she was confused about whether she
3 needed to appear. Ms. Wang represented that when she asked Mr. Polis on September
4 13, 2021, whether she should appear he initially told her she did not need to appear, but
5 then later instructed her to appear. If Mr. Polis had reviewed this Court's order
6 continuing the Polis OSC, and if he had served Ms. Wang with that order, they both
7 would have known from the inception that her attendance was required.

8 **g. Mr. Polis only partially complied with this Court's order to serve other**
9 **orders on his clients**

10 Based on Mr. Polis' failure to file the above-referenced proof of service, as well
11 as statements by Ms. Wang in which she appeared to overlook or ignore this Court's
12 prior findings of fact and rulings, this Court determined that the record needed to reflect
13 service of many more of this Court's written decisions and orders on Ms. Wang and Ms.
14 Chao. Accordingly, this Court issued an order directing Mr. Polis to file a proof of
15 service on Ms. Wang and Ms. Chao of docket numbers 276, 291, 302, 327, 330, 336,
16 337, 345, and 361. See Order (dkt. 366), p. 3:4-10 (incorporating portions of dkt. 361,
17 pp. 1:26-2:2, by reference).

18 On September 29, 2021 (eight days late), Mr. Polis filed a supplemental
19 declaration of service. Dkt. 385, pp. 3:23-4:9. But that declaration omits the docket
20 numbers emphasized above: 302, 336, 337 and 345.

21 **h. Mr. Polis failed to comply with this Court's directions to address how**
22 **the coercive sanction payments should be allocated**

23 At a hearing on July 20, 2021, at 2:50 p.m., this Court reminded Mr. Polis of prior
24 directions to address how the sanctions payments should be allocated. On July 22,
25 2021 this Court issued an order specifically directing Mr. Polis to address that issue:

26 Mr. Polis is directed to file a Declaration no later than July 27, 2021,
27 and with each subsequent coercive sanctions payment that does not identify
28 on its face the Contemnor on whose behalf each dollar is being paid,
identifying how the coercive sanction payments should be allocated [among]

1 the individual Contemnors [Order (the “Supplemental Sanctions Order,”
2 dkt. 330, p. 2:9-12 (emphasis added))]

3 On July 27, 2021, Mr. Polis filed a declaration (dkt. 333). But that declaration
4 failed to address how the coercive sanction payments should be allocated among the
5 Contemnors. See dkt. 327, p. 10:12-14 *and* 330, p. 2:9-12.

6 This Court’s August 3, 2021 Tentative Ruling again directed Mr. Polis to appear
7 to address that issue. Dkt. 337, Ex. A, Section (1)(c). Mr. Polis appeared and orally
8 addressed how to allocate the payments, but future checks continued to arrive from Mr.
9 Polis without specifying on whose behalf they were made.

10 Of course, this Court recognizes that the Funder might not be responding to any
11 inquiries from Mr. Polis about how to allocate the payments. But that is all the more
12 reason why Mr. Polis should have complied with this Court’s order to file his declaration
13 addressing any such confusion, so that the Alleged Employees and this Court would
14 have information that, despite the receipt of funds, it was unclear if some of the
15 Contemnors’ coercive sanctions actually were being paid.

16 Eventually Mr. Polis filed declarations addressing how those prior payments
17 should be allocated. See dkt. 339, p. 4:19-24; dkt. 370. The point is not so much that
18 his compliance was belated, but that his compliance came only after another string of
19 instances in which he ignored repeated reminders of his obligations under this Court’s
20 oral and written orders.²

21 There are other examples (*e.g.*, failure to notice that the sanctions of \$100.00 per
22 day was *per Contemnor*, not an aggregate of *all* Contemnors; and ongoing failure to
23 correct various deficient privilege logs). But the foregoing examples suffice to show Mr.
24 Polis’ pattern and practice for many, many months.

25 To be clear, this Court is not sanctioning Mr. Polis for any of the foregoing
26 examples: they are simply evidence that his failure to comply with this Court’s orders in
27

28 ² The Polis OSC directed him to address this issue at the OSC hearing. He did not. This Court is
left with no explanation except his disregard of yet another order of this Court.

1 connection with the May 17, 2021 documents from Johnny Ling cannot be chalked up to
2 mere forgetfulness and inadvertence. The pattern is far too pervasive.

3 **i. Mr. Polis' conduct goes hand in hand with his clients' efforts to**
4 **stonewall this Court's discovery orders**

5 There is yet more corroborating evidence. Mr. Polis' failure to comply with
6 discovery orders has not occurred in a vacuum. They go hand in hand with his clients'
7 efforts to stonewall discovery.

8 This Court has recently summarized "some of the Contemnors' most brazen
9 violations of this Court's discovery orders for many, many months" (dkt. 464, p. 6:15-
10 17):

11 First, ChaoLaw represented Debtor for over two years of prepetition
12 litigation with the Alleged Employees, and yet ChaoLaw claimed not to
13 have a single document from that representation. This Court found, by
14 clear and convincing evidence and after a multi-day evidentiary hearing,
15 that this assertion was completely incredible and false. See dkt. 276, pp.
16 14:8-23, 16:7-17:20.

17 Second, ChaoLaw and Debtor's designated person most
18 knowledgeable, Ms. Wang (the "PMK"), claim to have virtually no
19 knowledge of anything to do with Debtor, and no way of producing any
20 meaningful discovery. Yet they have not pointed this Court to a single
21 email, letter, text, or other communication that they ever sent to Debtor's
22 former principals, officers, workers, accountants, or anyone else in an
23 attempt to obtain documents responsive to this Court's discovery orders.
24 This Court concluded that they had utterly failed to meet their burden to
25 show that they had taken all reasonable steps to comply with those
26 orders, and establish categorically and in detail how compliance is
27 impossible. See dkt. 276, pp. 26:22-29:25.

28 Third, hand in hand with that lack of production, the "privilege logs"
belatedly provided by the Contemnors have been shams. They
repeatedly omit whole categories of documents. They also fail to include
the most basic information required of any privilege log, such as whether
persons other than the attorney and client have had access to the
documents at issue (the same issue that they now assert is of critical
importance, lest disclosure to Garrett Discovery were to waive the
attorney-client privilege). See dkt. 353, Ex. A, B & C, dkt. 361, pp. 7:8-8:2,
9:20-10:3 & dkt. 366, p. 4:10-16. [Memorandum Decision (dkt. 464),
pp. 6:18-7:11 (emphasis added). See also, e.g., dkt. 276, 291, 327, 361,
365, & 394.]

1 Again, this Court is not tarring Mr. Polis with his clients' misconduct. But nor can
2 this Court ignore the fact that Mr. Polis' failure to comply with this Court's discovery
3 orders fits squarely within his clients' pattern of blatant stonewalling of any discovery,
4 which reinforces this Court's findings about his motives.

5 **j. Summary of factual findings**

6 The Polis OSC directed him to address his numerous violations of this Court's
7 discovery orders in connection with the documents that Mr. Polis received on May 17,
8 2021 from Johnny Ling. Mr. Polis' only explanation was that he forgot having received
9 the documents, and inadvertently overlooked this Court's orders, despite many, many
10 reminders.

11 That testimony is completely incredible just based on the facts involving the
12 Johnny Ling documents. In addition, the falsity of that testimony is corroborated by
13 numerous similar instances in which Mr. Polis claims to have forgotten that he received
14 documents, or overlooked this Court's orders, and is further corroborated by the
15 stonewalling of discovery that has occurred in this case.

16 This Court finds by clear and convincing evidence that Mr. Polis violated this
17 Court's discovery orders repeatedly, willfully, and in bad faith. Alternatively, if there
18 were any doubt about that willfulness and bad faith (which this Court does not believe
19 there is), this Court finds that at the very least Mr. Polis acted with wantonness, reckless
20 disregard for this Court's discovery orders, and reckless disregard for the truth or falsity
21 of his factual assertions, all for the improper purposes described above, including
22 delaying the Alleged Employees' discovery efforts and needlessly increasing the cost of
23 litigation.

24 **3. Legal Standards**

25 **a. Inherent power to impose sanctions, implemented pursuant to 11 U.S.C.**
26 **§ 105(a)**

27 This Bankruptcy Court has the inherent power to impose "relatively mild" punitive
28 sanctions but not "significant" or serious" punitive sanctions. *In re Lehtinen*, 564 F.3d

1 1052, 1059 (9th Cir. 2009); *In re Dyer*, 322 F.3d 1178, 1197 (9th Cir. 2003), *abrogated*
2 *on other grounds, as stated in Gugliazza*, 852 F.3d 887, 898 (9th Cir. 2017). This
3 Bankruptcy Court can raise the issue of sanctions *sua sponte* under 11 U.S.C. § 105(a),
4 and did so in the Polis OSC.

5 “Sanctions under a court’s inherent power are justified against a party who
6 willfully disobeys a court order or acts in bad faith, ‘which includes a broad range of
7 willful improper conduct.’” *In re DeVille*, 280 B.R. 483, 495 (9th Cir. BAP 2002), *aff’d*,
8 361 F.3d 539 (9th Cir. 2004) (quoting *Fink v. Gomez*, 239 F.3d 989, 991-92 (9th Cir.
9 2001)). “To impose inherent power sanctions, a court must find that a party acted ‘in
10 bad faith, vexatiously, wantonly, or for oppressive reasons.’” *Id.* (quoting *Chambers v.*
11 *NASCO, Inc.*, 501 U.S. 32, 44 (1991)). “[B]ad faith or willful misconduct consists of
12 something more egregious than mere negligence or recklessness.” *In re Dyer*, 322
13 F.3d 1178, 1196. In addition, “[m]ere ignorance or inadvertence is not enough to
14 support a sanction award under” section 105(a). *Id.* (citing *Fink*, 239 F.3d at 992-93).

15 “Sanctions are available for a variety of types of willful actions, including
16 recklessness when combined with an additional factor such as frivolousness,
17 harassment, or an improper purpose.” *Fink*, 239 F.3d at 994. “A party can show bad
18 faith ‘by delaying or disrupting the litigation or by hampering enforcement of a court
19 order.’” *In re DeVille*, 280 B.R. at 496 (quoting *Hutto v. Finney*, 437 U.S. 678, 689 n.14
20 (1978)).

21 **b. Rule 9011 sanctions**

22 In addition, this Court may, on its own initiative, enter an order describing specific
23 conduct that appears to violate Rule 9011(b) (Fed. R. Bankr. P.), and that directs an
24 attorney to show cause why he has not violated such subdivision (b). The Polis OSC
25 did this, as well.

26 Rule 9011(b) provides, in relevant part, that by presenting to the court any paper
27 an attorney is certifying that to the best of the attorney’s knowledge, information, and
28 belief, formed “after an inquiry reasonable under the circumstances,”

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. [Rule 9011(b) (Fed. R. Bankr. P.) (emphasis added).]

In determining whether sanctions are warranted under Rule 9011(b), “bankruptcy courts must consider both frivolousness *and* improper purpose on a sliding scale, where the more compelling the showing as to one element, the less decisive need be the showing as to the other.” *In re Marsch*, 36 F.3d 825, 830 (9th Cir. 1994) (emphasis in original). “A claim is frivolous if it is both baseless and made without a reasonable and competent inquiry.” *In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (internal quotation omitted). The inquiry is an objective one that considers whether the attorney acted in a manner that a reasonably competent attorney admitted to practice before the court would. *Id.*

When a bankruptcy court imposes sanctions on its own initiative there is no ‘safe harbor’ in the Rule allowing lawyers to correct or withdraw their challenged filings. *In re Cabrera-Mejia*, 2011 U.S. Dist. LEXIS 140658, at *23 (C.D. Cal. Dec. 6, 2011). As a result, “*sua sponte* sanctions should be imposed only in situations that are akin to contempt of court.” *Id.* (internal citation and quotation omitted). “The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply.” *Id.* (internal citations and quotation omitted). See also *In re Nakhuda*, 544 B.R. 886, 902 (9th Cir. BAP 2016), *aff’d*, 703 Fed. Appx. 621

1 (9th Cir. 2017) (when bankruptcy court itself initiates sanctions under Rule 9011,
2 conduct must be “akin to contempt” which requires “more than ignorance or negligence
3 on the part of [the attorney].”).

4 Any sanction imposed for misconduct under Rule 9011(b) must be “limited to
5 what is sufficient to deter repetition of such conduct or comparable conduct by others
6 similarly situated.” Rule 9011(c)(2). Sanctions may include “an order to pay a penalty
7 into the court.” *Id.*

8 **4. Application of the law to the facts**

9 Mr. Polis’ misconduct in connection with the May 17, 2021 document production
10 from Johnny Ling fits hand-in-glove with the applicable legal standards. He has
11 blatantly disregarded his discovery obligations under this Court’s orders. He repeatedly
12 failed to acknowledge the existence of those documents and adamantly insisted that all
13 documents had been produced, when even the most minimal efforts would have shown
14 that those factual assertions were false. After belatedly admitting the existence of those
15 documents, he failed repeatedly to provide privilege logs. Although eventually he did
16 provide a document purporting to be a privilege log, he has continued to disregard this
17 Court’s orders to provide supporting briefs and declarations for the purported privileges.

18 This Court has carefully heard and observed Mr. Polis’ testimony. His testimony
19 that he allegedly overlooked or forgot his obligations, despite well over a dozen
20 reminders, lacks any credibility at all. Mr. Polis lied under oath. He acted willfully and in
21 bad faith, not inadvertently, when he repeatedly violated this Court’s discovery orders.
22 Mr. Polis’ misconduct clearly warrants sanctions under this Court’s inherent powers, as
23 implemented under § 105, and also under Rule 9011(b).

24 Alternatively, if there were any doubt about Mr. Polis’ willfulness and bad faith
25 (which, in this Court’s view, there is not), this Court’s findings of fact set forth above are
26 that, at the very least, Mr. Polis acted wantonly and with reckless disregard for this
27 Court’s discovery orders and for the truth or falsity of his factual allegations. He did so
28 for the improper purposes described above, including delaying the Alleged Employees’

1 discovery efforts, and needlessly increasing the cost of litigation. Again, that
2 misconduct warrants sanctions both under this Court's inherent powers, as
3 implemented under § 105, and under Rule 9011(b).

4 //

1 **5. Conclusion**

2 Our legal system depends on officers of the court not to lie or act with wanton
3 and reckless disregard for the truth. It depends on them to comply with court orders.

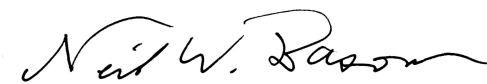
4 Litigants and their counsel have an enormous privilege of being permitted to
5 withhold documents from discovery merely by listing them on a privilege log. That
6 privilege is subject to only a few safeguards, including the possibility that the court will
7 be persuaded to review some of the documents *in camera* or otherwise test whether the
8 privilege log has set forth proper grounds to withhold documents.

9 Our legal system is completely undermined when an officer of the court lies (and,
10 alternatively, acts with wanton and reckless disregard for the truth and for improper
11 motives) when he claims that “everything” has been produced, claims to have
12 inadvertently “overlooked” numerous reminders about the missing documents, and
13 intimates that others are lying when they assert the existence of those documents. Our
14 legal system is further undermined when, having been caught failing to produce
15 documents, he falsely claims to have inadvertently “overlooked” the need for any
16 privilege log and then belatedly provides sham, unverified, and facially incomplete
17 privilege logs without any supporting brief and declarations that he has been ordered to
18 provide.

19 Mr. Polis has acted with contempt for the legal process and for the truth or falsity
20 of his representations, including his testimony under oath. He will be sanctioned
21 \$2,000.00 by separate order.

22 ###

23
24 Date: January 3, 2022

25 
26 _____
27 Neil W. Bason
28 United States Bankruptcy Judge